

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF PUERTO RICO

IN Re:

JOSE FRANCISCO HERNANDEZ VALENTIN

XXX-XX-1508

DEBTOR (S)

CASE NO. 09-06990-ESL

CHAPTER 13

TRUSTEE'S MOTION TO MODIFY CONFIRMED PLAN  
PURSUANT TO 11 U.S.C. § 1329

TO THE HONORABLE COURT:

NOW COMES José R. Carrión, Chapter 13 Trustee, and very respectfully alleges and prays:

1. Confirmed Chapter 13 Plan dated **September 24, 2009**, (Dkt No.**10**), provides for the distribution to all creditors provided for in the same, within its term, the amount of **\$38,249.00**.

2. For the post-petition tax year **2009** the debtor(s) in this case received an income tax refund in the amount of **\$134.00**, of which the amount of **\$134.00** have being delivered to the Trustee pursuant to 11 U.S.C. § 1306(a)(2).

3. Income tax refunds are disposable income, during the term of the plan. Unlike in chapter 7, any income tax refund due to the Debtors on account of income earned post-petition is property of the estate. 11 U.S.C. § 1306(a)(2). *In re Rodger*, 2010 BNH 5 (Bankr. D.N.H. 2010)

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4. Pursuant to 11 U.S.C. § 1329(a)(1) the Trustee is authorized to request the modification of a confirmed plan to increase or reduce the amount of payments on claims of a particular class provided for by the plan.

5. This modification is proposed in good faith and complies with the requirements for confirmation of 11 U.S.C. § 1329(a) and all provision applicable pursuant to subsection (b) of said section. [See: **Barbosa v. Soloman**, 235 F.3d 31, 38 (1st Cir. Mass. 2000)]

6. In view of the above the Trustee hereby request that the confirmed plan be modified to increase payments to **general unsecured creditors** provided for in the same, in an amount equal to the income tax refund received by the Trustee and described in this motion paragraph No. 2, to a new Plan Base equal to **\$38,249.00**.

**WHEREFORE** the Trustee respectfully prays that for the reasons herein described, this motion be granted and the confirmed Chapter 13 Plan dated **September 24, 2009, DKT #10**, be modified to increase payments to general unsecured creditors provided for in the same, in an amount equal to the income tax refund received by the Trustee and described in this motion paragraph No. 2, to a new Plan Base equal to **\$38,249.00**.

**21 DAYS NOTICE:** Pursuant to LBR 3015-2(f)(2)(A) and (C) and Rule 2002(a)(5) of the Federal Rules of Bankruptcy Procedures, the debtor(s), all creditors and parties in interest are hereby notified that if a timely objection to this proposed modification is filed the court will schedule a hearing, otherwise if no timely written opposition is filed, then the plan as modified by this motion will become the plan pursuant to 11 U.S.C. § 1329(b)(2).

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CERTIFICATE OF SERVICE: Pursuant to LBR 3015-2 (f)(1)(B) this request for the modification of the confirmed plan is distributed and served to all creditors and parties in interest as they appear in the attached master address list, by first class mail, unless registered with the Court as a filing user of the CM/ECF system as per LBR 5005-4 (b).

In San Juan, Puerto Rico this, Friday, April 8, 2011 .

/s/ Jose R. Carrion

Jose R. Carrion

Chapter 13 Trustee

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